

EXHIBIT C

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

JANE ROE, individually and on)
behalf of all others similarly)
situated,)

Plaintiff,)

vs.)

INTELLICORP RECORDS, INC., an)
Ohio corporation, and DOES 1-50,)
inclusive,)

Defendants.)

Case No. 1:12-cv-
02288-JG

DEPOSITION OF TODD CARPENTER

New York, New York

Thursday, December 13, 2012

Reported by:
Cheryll Kerr, LSR
Job No. 56396

1 T. Carpenter

2 T O D D C A R P E N T E R,

3 called as a witness, having been duly

4 sworn, was examined and testified

5 as follows:

6 THE SHORTHAND REPORTER: Please state
7 your full name and your address for the
8 record, sir.

9 THE WITNESS: It's Todd Carpenter.
10 My address is 29528 Lincoln Road, Bay
11 Village, Ohio 44140.

12 THE SHORTHAND REPORTER: Thank you.
13 Please proceed.

14 MR. COHEN: Before we start, I just
15 want to make it clear we reserve all
16 objections other than as to the form of
17 the question.

18 As to topics outside the scope of the
19 notice, the witness is testifying in his
20 personal capacity.

21

22 DIRECT EXAMINATION

23 BY MS. BECKER:

24

25 Q. Okay. Good morning, Mr. Carpenter. My

1 T. Carpenter

2 Q. Okay.

3 A. I know they are continuing to put that
4 together with our legal team.

5 Q. Okay. What is your position at
6 IntelliCorp?

7 A. I'm the president of IntelliCorp Records.

8 Q. What are your duties? Just generally,
9 what is your job function there?

10 A. Generally, it is to oversee the
11 day-to-day operations of IntelliCorp, so that's --
12 really, anything contractual or financial certainly
13 rolls up to me.

14 You know, I confer with my direct reports on a
15 weekly basis as to what's going on in their area,
16 what new things do we need to do, what course
17 corrections do we need to make, so really the
18 day-to-day operations of that.

19 MS. BECKER: Let's mark this as the
20 next exhibit, please.

21 (Thereupon, the document was then
22 marked by the shorthand reporter as
23 Plaintiff's Exhibit 7 for identification.)

24 BY MS. BECKER:

25 Q. I've asked the reporter to mark what I

1 T. Carpenter

2 MS. BECKER: I -- that's the only
3 number --

4 MR. COHEN: Oh, okay.

5 MS. BECKER: -- I wanted to say.

6 BY MS. BECKER:

7 Q. Can you give me an estimate of how many
8 of those reports included a Criminal SuperSearch?

9 A. I can't, off the top of my head.
10 Certainly -- you know, the majority of them would
11 have.

12 If you're asking for a specific percentage,
13 rather than being incorrect, I would say -- you
14 know, we could -- we could find that out, but --

15 Q. Okay. Would you guess it would be like
16 90 percent?

17 Or not "guess," but would you -- would that be
18 a reasonable estimate, or more or less than that?

19 A. Again, I would say less than that, but
20 somewhere north of 75 percent.

21 Q. Do you know who prepared the responses to
22 those questions? Who it is that actually ran those
23 numbers in response to the requests?

24 A. I think Dave Garrett ran those.

25 Q. Okay. IntelliCorp --

1 T. Carpenter

2 Q. Okay. Was this a one-time audit, or is
3 the audit an ongoing thing?

4 MR. COHEN: Objection to the form.

5 THE WITNESS: There was a one-time
6 accreditation audit for that, and then
7 there are a few steps that we need to do
8 to remain compliant with that.

9 BY MS. BECKER:

10 Q. And when was the one-time audit?

11 A. I think it probably started in either
12 late 2009 or early 2010, and was completed -- you
13 know, somewhere around April of 2010.

14 Q. The document states at the top "Criminal
15 SuperSearch Components, FCRA Compliant." That's
16 F-C-R-A. That stands for the Fair Credit Reporting
17 Act, right?

18 A. It does.

19 Q. Is that your understanding? Okay. Is it
20 okay if I just call that "FICRA" (phonetic)?

21 A. You can. I prefer FCRA, but okay.

22 Q. FCRA? Okay, I will call it the FCRA.

23 Is that intended to represent to an employer
24 that the searches -- or the product, I guess -- the
25 Criminal SuperSearch product -- complies with the

1 T. Carpenter

2 FCRA?

3 A. That is our position.

4 Q. Is that a determination that's made by
5 the compliance department at IntelliCorp?

6 A. Ultimately, yes.

7 I mean, on an ongoing basis, they would be the
8 ones that are watching and making sure the frequency
9 of updates and information that's there is up to
10 standards that they have to go on.

11 Q. Does IntelliCorp have an in-house
12 counsel?

13 A. We rely on Verisk's in-house counsel.

14 Q. Where is Verisk's corporate office?

15 A. Newark, New Jersey.

16 MR. COHEN: It's actually Jersey
17 City.

18 THE WITNESS: I'm sorry. Jersey
19 City.

20 BY MS. BECKER:

21 A. I relate to things as an airport. I'm
22 sorry.

23 Q. Okay. Turn to the second page of Exhibit
24 8. This is Bates stamped 647. It says "SuperSearch
25 Component Summary Instant Data."

1 T. Carpenter

2 purchase?

3 A. Again, that's really determined at the
4 account, so we have some accounts that lock those in
5 and require those, and we have some accounts that
6 are left to the user as a recommendation.

7 Q. Okay. If IntelliCorp recommends that a
8 single county criminal search be run, and the
9 employer does not select that option, it's not --

10 Let's assume under the account setting, it's
11 not mandatory. It's optional for the user at the
12 employee end. If they only wish to order the
13 Criminal SuperSearch report, will IntelliCorp
14 provide that?

15 MR. COHEN: Objection to the form.

16 THE WITNESS: So if they have -- you
17 know. We have made our recommendations.

18 BY MS. BECKER:

19 Q. Correct.

20 A. The client will view those. They go
21 through a confirmation page to say what products and
22 services they ordered.

23 They confirm that, and we fill the products
24 that they have chosen in that process.

25 Q. Okay. If the employer declines one of

1 T. Carpenter

2 IntelliCorp's recommendations, IntelliCorp will
3 still go ahead and sell them the products that they
4 in fact choose to purchase, correct?

5 A. We -- yes. I mean, we walk them through
6 the recommendations, the selection process, and as
7 they have chosen those products, those are the ones
8 that we charge them for and bill.

9 Q. Let's assume that an employer chooses a
10 Criminal -- an instant Criminal SuperSearch, and
11 they also select a single county criminal search,
12 okay, as the products they want. IntelliCorp --

13 Is it correct that IntelliCorp's computer then
14 runs the Criminal SuperSearch and provides those
15 results immediately to the employer?

16 MR. COHEN: Objection to the form.

17 THE WITNESS: Again, it's probably
18 not quite as you described that.

19 BY MS. BECKER:

20 Q. Okay.

21 A. There's a set of products that are
22 ordered by the client.

23 Q. Right.

24 A. The system parses those out by that
25 vendor table and sends them off for fulfillment.

1 T. Carpenter

2 The client can view status through the --

3 There's an online page that they can look at to
4 see where the status of that report is, and it
5 clearly walks them through how many products are
6 complete, how many are incomplete, and what's the
7 overall status of that search.

8 Q. And as each product is completed, that
9 product is available for the employer to view,
10 right?

11 A. Again, it's an online page.

12 As individual products are completed, that
13 starts to fill in that -- that view of the online
14 page that they have.

15 Q. Well, in what sense is it an instant
16 search?

17 A. The difference with the database search
18 as opposed to a single county?

19 A single county typically has a one- to
20 three-day turnaround, and the database search
21 typically has a fairly quick turnaround.

22 Q. By the "database search," you mean the
23 search that is done based on information already
24 loaded into and available on IntelliCorp's internal
25 database?

1 T. Carpenter

2 around what we hold in that, and applies the federal
3 FCRA guidelines for how far back we can go.

4 If data becomes stale, we pull the information
5 out of that database and don't have that available
6 through an FCRA search. The nonFCRA clients will
7 get a fuller set of information for that.

8 Q. What type of client would order a nonFCRA
9 search?

10 A. We have investigative clients. For
11 instance, our parent company does claims
12 investigations, and we will provide information to
13 them.

14 Q. So not consumer reports?

15 A. Correct.

16 Q. The results of the Criminal SuperSearch
17 from IntelliCorp's criminal database normally are
18 available to the employer within how much time?

19 A. You know, the SuperSearch generally
20 complete in less than 10 seconds. What's the
21 definition of "instant"?

22 Q. Does IntelliCorp maintain a copy of the
23 search results that are -- you know, instantly
24 provided to the employer?

25 A. The data in which the screen is built off

1 T. Carpenter

2 of is snapshotted and saved for each individual
3 search that we do.

4 Q. Okay.

5 A. So while it's not a -- it's not a paper
6 format, that information is stored in -- in a -- you
7 know, a data element. An XML format in the
8 database.

9 Q. How long is it saved for?

10 A. Indefinitely. Currently, there is no
11 expiration.

12 MS. BECKER: Please mark this as the
13 next exhibit.

14 (Thereupon, the document was then
15 marked by the shorthand reporter as
16 Plaintiff's Exhibit 9 for identification.)

17 BY MS. BECKER:

18 Q. So in order to understand better what the
19 employer sees and has available through searches, I
20 think we'll take a look at the documents related to
21 the plaintiff in this case.

22 Sir, I have handed you what the reporter has
23 marked as Plaintiff's Exhibit 9. This document was
24 produced by plaintiff and is Bates stamped Plaintiff
25 000031.

1 T. Carpenter

2 (Informal discussion held off the
3 record.)

4 BY MS. BECKER:

5 Q. I will represent to you that our client
6 has told us that she received a copy of this from an
7 employer.

8 So I would like to ask you, sir, if this does
9 look to you like a printout of what an employer
10 would see after logging onto IntelliCorp's website
11 and ordering a Criminal -- an instant Criminal
12 SuperSearch.

13 A. Again, the format of the report is -- you
14 know, what we use today.

15 The contents of that report would vary greatly,
16 depending on the products and services that they --
17 that they ordered.

18 Q. Okay. Let's go through here. It says --
19 "Subject information" is the first information
20 on page 1. It says "Likely name match," so what
21 does that signify when it says "Likely name match"?

22 A. That refers to what we call a fuzzy name
23 setting, so it is, again, an account setting that we
24 can tighten up the tolerance or loosen the tolerance
25 around searching for a name, and that represents a

1 T. Carpenter

2 setting for this client.

3 Q. What are the other options?

4 I mean, what are the range of options that
5 exist for that?

6 A. I think there are three options. I'm not
7 positive what we --

8 I think the one higher would be best name
9 match, likely name match, and there's another one
10 below that. I'm not sure what that one is, the
11 label on it. I'm not positive of what we call that.

12 Q. Under "Other Information," it says
13 "Report status unprocessed." What does that mean?

14 A. It means the --

15 All products ordered for this for this subject
16 are not complete, so they haven't -- you know, each
17 of the products haven't completed yet.

18 Q. Okay.

19 So does that line -- "Report status, remain
20 unprocessed" -- refer to all of the products that
21 all this particular employer ordered are completed?

22 A. For that particular employer? For this
23 particular --

24 Q. Search request.

25 A. -- request?

1 T. Carpenter

2 Q. Right, right.

3 A. Yes.

4 Q. And "Search request date" -- is that the
5 time that the employer first logs on to
6 IntelliCorp's website?

7 A. It is the date in which they went
8 through -- you know, as they ordered this particular
9 search, clicked through the confirmation page and
10 said, "Yes, process the search."

11 Q. Does each employer client of IntelliCorp
12 have a unique password or some kind of web
13 identifier when they log on to the site?

14 A. Each user does.

15 Q. Each user? So what --

16 For example, in this case, the employer is
17 Smart Choice Investments Inc./BrightStar. I would
18 like to refer to them as Brightstar, if -- just so
19 we're clear, okay?

20 A. In --

21 Q. So BrightStar --

22 A. Just so you understand, we have multiple
23 BrightStar accounts, so --

24 Q. Oh, okay.

25 A. I don't want to confuse things, but we

1 T. Carpenter

2 employee's Social Security number that they
3 presented is a valid number? Is that the purpose of
4 providing this?

5 A. It is, and that it's not on the death
6 master file.

7 Q. Okay. Thank you.

8 Then we have "California Single County
9 Criminal, Los Angeles." That says "In process," so
10 that means IntelliCorp is going to run the search,
11 and it hasn't been completed yet, correct, or is in
12 the process of running the search and hasn't been
13 completed yet?

14 A. Yeah. It just -- IntelliCorp or -- you
15 know, a vendor of IntelliCorp. It means the search
16 has been ordered --

17 Q. Correct.

18 A. -- but has not completed.

19 Q. Okay. "Criminal SuperSearch including
20 nationwide sex offender registry" says "Results
21 found." What does that mean?

22 A. It means that there's information that
23 returned as part of that search.

24 Q. Meaning that the person has been found to
25 have some -- a criminal past of some sort, correct?

1 T. Carpenter

2 A. I mean, if you're reading up here, it
3 just says there's results found that need to be
4 reviewed.

5 Q. Well, if I am the employer, and I am
6 reading this, I am trying to understand what --
7 What is the employer supposed to understand
8 from seeing "Results found"?

9 MR. COHEN: Objection to the form.

10 THE WITNESS: Maybe you can reask the
11 question.

12 BY MS. BECKER:

13 Q. Does this "Results found" with respect to
14 the Criminal SuperSearch mean that there is some
15 evidence that a person was arrested? Charged with a
16 crime?

17 A. It means we found a record that matches
18 the information that was provided as part of the
19 subject, and we've returned a record in that search.

20 Q. And by "record," you mean a criminal
21 record indicating that the person was -- you know,
22 arrested, charged, convicted or something, correct?

23 MR. COHEN: Objection to the form.

24 THE WITNESS: We have returned a
25 record from our database.

1 T. Carpenter

2 Q. Okay. Next to "Charge description," it
3 says "Los Angeles Superior Court index data." Do
4 you see that?

5 A. I do.

6 Q. Does that mean that the source of this
7 information is from the Los Angeles Superior Court
8 index data?

9 A. That would be correct.

10 Q. Is it your understanding that that was
11 the only source of data that had been consulted by
12 the IntelliCorp IntelliSearch when it generated this
13 report?

14 A. No.

15 Q. With respect to the charges listed on
16 this piece of paper, was that the only source of
17 information for that charge information?

18 A. So again, this record -- I mean, there's
19 the subject information. We search our criminal
20 database, and -- you know.

21 It looks through all the sources of information
22 in the database, but this was the record that
23 matched the criteria for the subject that was input.

24 Q. Now, this report was generated just
25 automatically by IntelliCorp's computer system,

1 T. Carpenter

2 right?

3 A. Once the user selects yes, confirms that,
4 there's -- there is manual input, certainly, on --
5 you know, the -- some of the offline searches. The
6 system collects that information and makes those
7 results available through that.

8 So the Criminal SuperSearch in that case is
9 really done in a -- it does not require any manual
10 intervention in that process.

11 Q. All right, so no human had to get
12 involved in between the time somebody at -- May
13 Dolores entered this request, and this report was
14 output?

15 It was strictly done by IntelliCorp's computer
16 system, correct?

17 A. Not quite. I mean, the output itself --
18 The individual user would have to go in and
19 click on and view the results that were available
20 through the online system.

21 Q. Okay. May Dolores would have to do that?
22 May -- I'm not sure if May or Dolores is her first
23 name, or --

24 A. I think it's Dolores May, but --

25 Q. Okay.

1 T. Carpenter

2 A. -- there are some cases where -- you
3 know, a user can see other's search requests and
4 some users are set up only to see their own, so
5 this -- you know.

6 It captures the user ID when the request is
7 made. Presumably, that's who's viewing it, but I
8 can't tell you that for sure, so...

9 Q. No employee of IntelliCorp was involved
10 in preparing this report?

11 A. Correct.

12 MS. BECKER: Please mark this as the
13 next exhibit.

14 THE SHORTHAND REPORTER: Okay.
15 Exhibit 10.

16 (Thereupon, the document was then
17 marked by the shorthand reporter as
18 Plaintiff's Exhibit 10 for
19 identification.)

20 MS. BECKER: We've marked as Exhibit
21 10 some documents that were produced by
22 IntelliCorp Bates stamped 259 through 270
23 starting with a cover letter from
24 IntelliCorp's compliance department to the
25 plaintiff -- well, to Mr. Fok,

1 T. Carpenter

2 A. We can tell as each product is complete.

3 I can't tell when you they have been viewed.

4 Q. Right, so --

5 A. Systematically, the system tells you they
6 are complete. I can't tell you when they have been
7 viewed.

8 Q. So you can tell me when IntelliCorp from
9 its end completed each report, but you can't tell me
10 when the employer chose to look at it? Is that
11 fair?

12 A. Right. IntelliCorp ordered one of our
13 vendors in our production of that, but yes.

14 Q. Okay. Thank you.

15 So Exhibit 10 was generated from your RNEERS
16 system?

17 A. That's correct.

18 MS. BECKER: For the reporter, it's
19 all caps, R-N-E-R-S.

20 BY MS. BECKER:

21 Q. So sir, RNEERS stand for Researchers
22 National Extranet Reporting System; is that right?

23 A. I believe so, yes.

24 Q. And that's a proprietary system created
25 and owned by IntelliCorp?

1 T. Carpenter

2 I'm not sure whether -- whether my team in
3 response to this request put that at the top of
4 that, or whether that was labeled after the fact.

5 MR. FOK: My name is Devin Fok, for
6 the record.

7 I am the attorney who requested the
8 production initially in December. When it
9 got to me, it was stated on the top of
10 that document.

11 THE WITNESS: Okay.

12 MS. BECKER: Please mark this as the
13 next exhibit.

14 (Thereupon, the document was marked
15 by the shorthand reporter as Plaintiff's
16 Exhibit 11 for identification.)

17 BY MS. BECKER:

18 Q. Okay. We've marked as Plaintiff's
19 Exhibit 11 an IntelliCorp document Bates stamped
20 2233 to 2235. This is another IntelliCorp report
21 provided to BrightStar regarding the plaintiff also
22 run by May Dolores.

23 You will note in this one the status of the
24 report is "Process complete," so it correct, sir,
25 that --

1 T. Carpenter

2 Am I reading this document correctly that the
3 search request was October 20th, 2011 and it was
4 completed on October 26th, 2011?

5 A. If your eyes are as good as mine, is that
6 a 26 or a 28?

7 MS. BECKER: Josh?

8 MR. FOK: Twenty-eight.

9 MS. BECKER: Twenty-eight? Thank
10 you.

11 BY MS. BECKER:

12 Q. Okay, it was completed on the 28th?

13 MR. COHEN: I'm not sure.

14 THE WITNESS: I am okay to rely on
15 those dates, so if you can read them,
16 sure, I am okay to rely on those.

17 BY MS. BECKER:

18 Q. Okay.

19 A. Right.

20 Q. So on the first page of this report, we
21 have that same Social Security number verification,
22 "Results found."

23 We have Criminal SuperSearch, "Results found,"
24 and then we have above that, California --

25 MR. COHEN: Did you read that right?

1 T. Carpenter

2 into our system the results of their search.

3 So did they see anything or didn't they see
4 anything in the middle of that? I don't know that
5 for sure. They did not report any results back in
6 terms of records here.

7 Q. Well, from point of view of the employer
8 reading this report, this indicate that there are no
9 criminal records in the County of Los Angeles
10 pertaining to the plaintiff, correct?

11 A. As of that search, we found no records
12 that matched that criteria.

13 Q. Is this document the total of the
14 information that would be available to BrightStar
15 regarding the results of IntelliCorp's single county
16 criminal search pertaining to Ms. Hillard?

17 A. This report is the result of the searches
18 that we provide, and it is the -- you know. It's
19 the background report that we provide to the
20 customer.

21 Q. So there aren't any other reports that
22 might have been provided to this customer in this
23 case that for some reason IntelliCorp has not
24 produced to us?

25 A. That's correct.

1 T. Carpenter

2 Q. Okay.

3 (Thereupon, the document was then
4 marked by the shorthand reporter as
5 Plaintiff's Exhibit 12 for
6 identification.)

7 THE SHORTHAND REPORTER: Exhibit 12.

8 MR. COHEN: I think the last question
9 was whether there were any reports
10 provided to this customer -- are you -- is
11 that supposed to be specific to this
12 subject?

13 MS. BECKER: Yes, yes. I said --
14 yes, to Ms. Hillard.

15 MR. COHEN: Okay, but that question
16 didn't include that.

17 I just want to make sure, because
18 obviously there are other reports to --

19 MS. BECKER: No. I meant to limit it
20 to this customer.

21 MR. COHEN: This subject?

22 MS. BECKER: Subject, sorry.

23 BY MS. BECKER:

24 Q. Okay. Exhibit 12 is another IntelliCorp
25 background report regarding the plaintiff. This

1 T. Carpenter

2 one, you'll see, was for 5LIFE Ventures, Inc. d/b/a
3 ComforCare Senior Services.

4 This is 2236 to 2239, and is this essentially a
5 screen shot of what report was available to -- the
6 completed report that was available to ComforCare
7 with respect to the individual subject of this
8 search?

9 A. Yes.

10 Q. And is it correct that the request --
11 where it says "Search request date" of March 10th,
12 2011, that would be the date that the individual at
13 ComforCare logged on and requested that the search
14 be commenced, correct?

15 A. Correct. March 10th, 2011.

16 Q. And the complete date is March 15th,
17 2011? That's when IntelliCorp completed all of
18 these searches that were purchased in this case,
19 correct?

20 A. For this report, yes.

21 Q. Okay. Would you look at the third page
22 of this document, please?

23 It's California single county criminal search
24 results. The charge code here is PC866, I think.

25 MR. COHEN: It's 666.

1 T. Carpenter

2 MS. BECKER: What is it?

3 MR. FOK: It's 666.

4 MS. BECKER: Okay, 666?

5 BY MS. BECKER:

6 Q. Again, this doesn't tell what you the
7 level of the offense was, correct, whether it's a
8 felony or a misdemeanor?

9 MR. COHEN: You mean that line
10 doesn't?

11 Q. That line doesn't. Read --

12 A. I think if you read down.

13 Q. Further down? I'm sorry.

14 It tells you there was a felony, tells you the
15 disposition, and the sentence. Does it tell you
16 anything about whether or not probation was
17 successfully completed?

18 A. I can read the sentence line. That's as
19 close as it gets.

20 So there's three years of formal probation, 133
21 days in jail with 133 days' credit, and a fine of
22 \$400.

23 Q. Right. Is it your understanding that
24 means the sentence that was imposed, or the sentence
25 that was completed, or are you able to say one way

1 T. Carpenter

2 or another?

3 A. I'm not.

4 Q. Going further down on the page to
5 California criminal records, this is through the
6 Criminal SuperSearch, correct?

7 It reports at the very last line on that page
8 the charge code of P211 as well as P666. Do you see
9 that?

10 A. I do.

11 Q. And in this case, the report did not
12 provide any information regarding the level of the
13 P211 offense; is that right?

14 A. I don't see any on the report, correct.

15 Q. And it doesn't say anything about the
16 disposition of that charge, correct?

17 A. That's correct.

18 Q. Where it says "Charge description, Los
19 Angeles Superior Court index data," does that mean
20 that the source of the information about these two
21 charges was the Los Angeles Superior Court index
22 file?

23 A. I believe that's why we put that on
24 there, yes.

25 Q. If the employer -- in this case,

1 T. Carpenter

2 ComforCare -- had wanted to find out the disposition
3 of the P211 charge, is there another product that
4 IntelliCorp sells that they could have purchased to
5 find that out?

6 MR. COHEN: Objection to the form.

7 THE WITNESS: What are you asking?

8 BY MS. BECKER:

9 Q. When -- if I'm ComforCare, and I get the
10 Criminal SuperSearch results, right, and I see that
11 it says no disposition information is provided,
12 correct, what other products are available to me
13 from IntelliCorp to find more information out about
14 the disposition of the charges?

15 MR. COHEN: Same objection.

16 THE WITNESS: I mean, we have
17 multiple products that cover different
18 areas. Those are there. We make
19 recommendations for other single county
20 products.

21 In this case, they have a California
22 single county as well.

23 BY MS. BECKER:

24 Q. Okay. When IntelliCorp did the
25 California single county search in this case, how

1 T. Carpenter

2 did IntelliCorp acquire the information for the
3 California single county search?

4 Was it through a vendor or -- or some other
5 way?

6 A. For this particular --

7 Q. Yeah.

8 A. -- record? I think at the time, the way
9 that they are searching California -- and I may be
10 slightly off, but in general I think this is the way
11 that this was working at this particular time.

12 They would first check the L.A. online system,
13 and if they found something, the court runner goes
14 to the court and gets the documents for that and
15 then transposes those back into our system.

16 Q. When you say they go to the "online
17 system," is that an IntelliCorp employee who does
18 that?

19 A. That is not -- in -- again -- you know,
20 that can vary county by county, so we have -- you
21 know, systematically set up the chart that we went
22 through and how the system directs what search and
23 who is going to fulfill that.

24 For L.A. County, that would go out to a
25 particular vendor, and it's that vendor's process

1 T. Carpenter

2 for how they search that -- that particular court.

3 They would have followed that to put the
4 information back into our system.

5 Q. IntelliCorp has just one office in Ohio,
6 right?

7 A. That's correct.

8 Q. Does IntelliCorp itself have any
9 agreement with services who actually provide RNEERS
10 to go to the court? To courts?

11 A. Absolutely.

12 Q. Okay, and they also have contact
13 contracted vendors who also have agreements with
14 people who go to the court?

15 A. Yeah. I mean, we typically have an
16 agreement one level deep. If that vendor has other
17 ones -- you know, so some of the vendors have direct
18 employees that they're using. Some of them have
19 contract employees, so there's -- you know.

20 It varies, I guess, in terms of what
21 relationship is, but we have a contract with each
22 vendor that supplies our offline searches for us.

23 Q. Okay, and those vendors were identified
24 in that other exhibit we looked to earlier, right?

25 A. Correct.

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2 processes that -- you know, clients will contract us
3 to do additional things for them, but in general,
4 the adverse action process is something that the
5 client is responsible for.

6 Q. And is it also true that the first time
7 IntelliCorp provided Ms. Hillard with a copy of
8 these documents that explain your rights under the
9 FCRA, which are the pages Bates stamped 2247 through
10 2250, that was when it sent this letter to her and
11 her counsel?

12 A. I wasn't intimately involved in that, but
13 generally, I think that's the way that went, yes.

14 MS. BECKER: Okay. Let's take a
15 break for lunch.

16 (Recess taken at 12:52 p.m.)

17 (Resumed at 1:36 p.m.)

18 BY MS. BECKER:

19 Q. Mr. Carpenter, when -- does
20 IntelliCorp --

21 A. Which document are you looking at?

22 Q. I'm not referring to a document.

23 A. Okay.

24 Q. I might in a minute. I'm sorry. If
25 IntelliCorp does a single county criminal search on

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2 somebody and finds additional information in there
3 that is over and above what the sources included in
4 the Criminal SuperSearch in the database used to
5 generate the Criminal SuperSearch, does IntelliCorp
6 update the internal database used for the Criminal
7 SuperSearch?

8 A. We do not, off the single counties.

9 Q. Okay. So if we look, for example, at
10 Exhibit 11, so the --

11 MR. COHEN: Hang on a second.

12 (Pause)

13 MR. COHEN: Okay.

14 BY MS. BECKER:

15 Q. Just looking at first page, so this
16 report says that for the single county criminal in
17 California, no results were found, right?

18 Meaning there is no -- you know, evidence of
19 criminal wrongdoing in that system, right?

20 A. We did.

21 Q. Then for Criminal SuperSearch, it says
22 "Results found." Don't those seem inconsistent to
23 you?

24 A. We really run -- you know, those searches
25 as independent products, so when we have the subject

1 T. Carpenter
2 information input into the system, both of those are
3 queued up and processed independently, and the
4 results from that are reassembled as they are
5 completed into the view of the report.

6 Q. At the time that the --

7 In 2011, when this Exhibit 11 was run, what was
8 IntelliCorp's policy and procedure with how it
9 reported records which are -- which were expunged
10 pursuant to state law?

11 A. So if -- if we're aware of a record that
12 is expunged, that record is -- you know, it's a
13 different process for different products.

14 So from the SuperSearch standpoint, if we're
15 aware that a record is expunged, that record is
16 marked in the database so that it will not be
17 returned.

18 From a single county standpoint, it's part of
19 our process that we give to our vendors in terms of
20 how to deal with the results that they find and what
21 we want reported.

22 Q. When you say "if we're aware," how does
23 IntelliCorp get that information?

24 A. In which one?

25 Q. Well, you said, I believe, "If we're

1 T. Carpenter

2 aware that a record has been expunged when we do our
3 Criminal SuperSearch, we won't include it."

4 A. So -- you know. Again, from sources of
5 information that go into our database, some of the
6 sources provide us with expungement information. We
7 are a member of the Expungement Clearing House, who
8 also provides us with expunged records, and we
9 also -- you know.

10 If we are informed from an individual from a
11 dispute process and informed in that way, we will
12 also mark those records as expunged, and that
13 pertains specifically to the database.

14 From a single county standpoint, they may or
15 may not see the record depending on the court and
16 how that court makes that available, and then -- you
17 know. There's some interpretation of information
18 there as that's -- as the researcher brings that
19 back and -- you know, would enter that into the
20 system.

21 Q. If an employer --

22 If Ms. Hillard were to apply for another job,
23 and they happened to choose IntelliCorp to do a
24 background check on her, and IntelliCorp today ran
25 an instant Criminal SuperSearch on Ms. Hilliard,

1 T. Carpenter

2 is the single county for that.

3 Q. IntelliCorp is a consumer reporting
4 agency as defined under the FCRA, correct?

5 A. We are.

6 Q. And does IntelliCorp believe that every
7 consumer report that it provides has to comply with
8 the FCRA?

9 A. We do.

10 Q. As IntelliCorp applies -- applies that
11 understanding, does a consumer report that reports a
12 charge -- a criminal charge but does not report the
13 disposition of that charge comply with FCRA?

14 MR. COHEN: Hang on a second.

15 To the extent that answering that
16 gets into attorney/client communications
17 and advice, I would object to that, and
18 you have to respond, so I would just give
19 you that instruction.

20 I guess you can repeat the question
21 and see if you can answer it without
22 getting into attorney/client
23 communications or advice. Would you
24 please read back the question?

25 (Thereupon, the requested portion of

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2 employees.

3 Did your reports comply with the FCRA? As a
4 business person, can you answer that question?

5 A. I can.

6 Q. And what's the answer?

7 A. We feel that we are complying with the
8 FCRA in producing those -- those reports.

9 Q. Okay, and I am interested in purchasing
10 your Criminal SuperSearch product.

11 Do the reports generated through the Criminal
12 SuperSearch comply with the FCRA?

13 MR. COHEN: And you can answer as to
14 your understanding, if it is not based on
15 advice or discussions with counsel.

16 THE WITNESS: Generally, I answered
17 that in the question before.

18 I mean, our process and procedures
19 are -- are put together through advice
20 with counsel in what we need to do to
21 comply with that.

22 BY MS. BECKER:

23 Q. If and --

24 If an employer asks you whether either Criminal
25 SuperSearch product complies with the FCRA, would

1 T. Carpenter

2 you answer that question?

3 A. We feel that our reports comply with the
4 FCRA.

5 Q. Including the instant criminal
6 SuperSearch reports?

7 A. Yes.

8 Q. Okay.

9 Now if a report as Criminal SuperSearch
10 indicates there are charges, but does not include
11 publicly available information as to how the charges
12 were disposed of, is that report --

13 Under IntelliCorp's policy, does that comply
14 with the FCRA?

15 MR. COHEN: I will make the same
16 objection, that it's calling for a legal
17 conclusion.

18 You can ask whether he has told
19 people that, but you can't ask whether he
20 has a legal opinion about it.

21 MS. BECKER: All right.

22 BY MS. BECKER:

23 Q. Have you ever discussed that with
24 anybody?

25 A. As to whether our reports -- what --

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2 Give me one second here.

3 (Informal discussion held off the
4 record.)

5 MS. BECKER: Please mark this as the
6 next exhibit.

7 THE SHORTHAND REPORTER: Okay. This
8 will be Exhibit 15.

9 (Thereupon, the document was then
10 marked by the shorthand reporter as
11 Plaintiff's Exhibit 15 for
12 identification.)

13 MS. BECKER: Please mark this as
14 Exhibit 16.

15 (Thereupon, the document was then
16 marked by the shorthand reporter as
17 Plaintiff's Exhibit 16 for
18 identification.)

19 MR. COHEN: Do you have a copy for
20 us?

21 Before you ask, can you wait until we
22 have a copy?

23 MS. BECKER: Yes. Didn't I give you
24 that one?

25 MR. COHEN: Last thing I have is 14.

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2 requiring the applicant's email and/or street
3 address, and then toward the bottom, it says that
4 there are two options, "Notification" and "CCU
5 option."

6 So are you familiar with the changes that are
7 being discussed in here?

8 A. Relatively.

9 Q. So did IntelliCorp have a policy prior to
10 these changes going into effect in 2009 about
11 obtaining an applicant's email address?

12 Was that not required previously? Was this a
13 new change?

14 A. It was not required before this.

15 Q. Was a street address required?

16 A. In some circumstances, but not in all
17 circumstances.

18 Q. So can you explain to me just what are
19 the two options that this is discussing?

20 A. So at the time, I think we were
21 implementing the criminal case update and putting
22 in -- you know, some additional measures for
23 notification to the individual, so the criminal case
24 update is -- again, it's another account setting
25 that allows the customer to have a second -- we call

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2 A. It is. It -- it's the -- a notice under
3 the 613 -- you know, where -- again, I think we
4 continue to look at our process and procedures and
5 look for places to modify and enhance those.

6 At the time, we felt that we needed to improve
7 the collection of the email and street address and
8 the notifications that were being sent out.

9 Q. In 2009, was it IntelliCorp's practice to
10 send any communications to a consumer about whom it
11 had run a background report?

12 A. I think you'd have to be more specific.

13 Q. Okay. If IntelliCorp ran a Criminal
14 SuperSearch report on somebody, and it produced
15 results indicating that there was criminal history
16 information on the report, did IntelliCorp send a
17 notice to the consumer saying that a request for
18 public information about them had been performed by
19 IntelliCorp?

20 A. Prior to September, no.

21 Q. Okay. September 2009?

22 A. Correct.

23 Q. Okay. How did that policy change after
24 September of 2009?

25 A. We really kind of took a belt and

1 T. Carpenter

2 suspender approach and added additional
3 notification. If -- if the client ran a database
4 search and did not select the recommendations that
5 went with that, then we would send notification out
6 to the individual.

7 Q. Only if the client did not select the
8 recommendations?

9 A. It gets probably a little bit more
10 detailed than that. You know, there's a whole
11 decision tree that goes into notifications and when
12 notifications don't go out.

13 But in general, if they didn't take
14 notifications and ran the SuperSearch, then we would
15 be sending notification out if they didn't agree to
16 do the -- the updates.

17 Q. Okay, so the criminal case update --
18 that -- does that include all -- when -- when -- as
19 IntelliCorp used that term, "criminal case update,"
20 does that include everything after a Criminal
21 SuperSearch or in addition to a Criminal
22 SuperSearch?

23 A. Again, the criminal case update is an
24 account setting, so -- and just being careful of
25 all -- but for those accounts that have that turned

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2 A. It was not in that, so we recommended
3 that, and they ran those both in the first pass, so
4 their account was not turned on for CCU.

5 Q. Okay. Their account was not turned on,
6 so did IntelliCorp send a notice to the plaintiff?

7 A. My understanding is we did not.

8 Q. According to the policies in place, was
9 IntelliCorp supposed to? I mean, I am just trying
10 to -- you know.

11 Putting aside any errors that could have been
12 made in my client's case, I am reading the policy,
13 and it says -- I don't mean to testify. I am just
14 trying to -- you know. This policy seems to state
15 either IntelliCorp's going to send a notice or the
16 client has CCU; is that correct?

17 That's, at least, what this policy is supposed
18 to be?

19 A. Again, this policy was trying to educate,
20 I think, the folks at IntelliCorp of the changes
21 that were coming as a result of that.

22 Q. Okay.

23 A. So it was giving questions and answers so
24 that the internal people could talk to clients about
25 changes coming in and be able to answer those

1 T. Carpenter

2 account setting?

3 A. That is a product that they would order.

4 Q. One product?

5 A. And then the results of that are varied
6 by -- can be account settings as well, so the
7 account settings would vary.

8 What's returned from the database are the fuzzy
9 name setting, whether we include county matching or
10 not, whether we would include name only accounts or
11 not, or records. There's --

12 Traffic records can be turned on or off, so
13 those, again, are all account settings that
14 either -- you know, will broaden the set of results
15 or -- or narrow the set of results that you would
16 get back from that single product.

17 Q. Okay. Let me ask the question another
18 way.

19 In what circumstances, if any, does IntelliCorp
20 send a notice to the consumer that public records
21 regarding the consumer have been reported by
22 IntelliCorp?

23 A. If there's a record that is reported
24 coming from the database that doesn't have an
25 accompanying single county search that goes with

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2 that, then there would be a notification sent to the
3 individual.

4 Q. And if the lawyer does pay for the single
5 county search, then IntelliCorp does not send a
6 notice?

7 A. Depends on where the record comes from
8 and where the single county search would be.

9 Q. Okay, so in what circumstances would
10 IntelliCorp send a notice?

11 A. So it looks at -- you know, where the
12 record would come from in the database, and if
13 there's a single county that would match up to the
14 jurisdiction that record would come from, a notice
15 would not be sent.

16 If there's not a single county that would match
17 up, for instance -- you know. If you ran that in
18 California, and the database returned the California
19 record with a California single county, that would
20 not generate a notice.

21 If you are in California, and we returned a
22 record in Texas, and you ran a California single
23 county, the notice would still go out, because
24 there's not a corresponding single county that would
25 go with that.

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2 Q. Okay, so the notice -- I really don't
3 mean to misstate your testimony, but the notice
4 would go out if IntelliCorp's system recommends a
5 single county -- a particular single county search
6 and the employer does not pay for that particular
7 single county search to be run? Is that what you're
8 saying?

9 Like in your hypothetical, they didn't pay for
10 the Texas one, so that's why you are saying the
11 notice might go out?

12 A. Or Texas might not have been recommended,
13 because there wasn't an address history to support a
14 recommendation, so take the payout of it, right?
15 It's --

16 It really does come down to -- you know, every
17 record in the database is marked from which county
18 that it comes from, and we can see whether there's a
19 corresponding single county that's ordered for that
20 or whether there's not.

21 If there's a single county that's ordered for
22 where that record comes back, then we do not send
23 notice. If there's -- if there's a record that
24 doesn't have a corresponding single county, then we
25 would send notice.

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2 internal database? The criminal database?

3 A. They are not.

4 Q. So they would still be reported at --

5 A. They are no longer reported on a report.

6 We maintain a record of that, because sometimes the
7 sources that we get information from will send us
8 the record again.

9 And for us to make sure that we eliminate that
10 out of the database, if we have updated that, we
11 have to keep a record of the records that we have
12 marked as expunged.

13 Q. Okay, so when an employer, though, goes
14 in just through the web to get an instant Criminal
15 SuperSearch report from IntelliCorp, are those
16 records going to be pulled up or not pulled up?

17 A. Once a record is marked as expunged, it
18 is never included again on a report -- on any kind
19 of report, so we only --

20 We only keep that for our own tracking purposes
21 to make sure those records remain expunged in the
22 system.

23 Q. Tell me about the Expungement Clearing
24 House. IntelliCorp is -- is IntelliCorp a partner
25 in some entity called the Expungement Clearing

1 T. Carpenter

2 House?

3 A. We are a member of that.

4 Q. A member? What -- is it a corporation?
5 What type of entity is it?

6 A. I don't know quite how to classify it.
7 It's a collaboration of a few different background
8 screening companies that have come together in an
9 effort to try to share expungement information and
10 to make sure we are delivering as accurate results
11 as possible.

12 Where we have an expungement that's been
13 verified amongst the member, that's shared amongst
14 those members so that others can make sure they have
15 their systems and data updated with the same
16 information.

17 Q. So the members are exchanging the actual
18 data about these criminal records so that they can
19 each input them into their respective databases?

20 A. We have -- it's a -- a very secure way,
21 but in the end, yes, we are sharing information with
22 "Here's the expungements that we have received and
23 processed," and likewise, the other members are
24 doing the same thing with us.

25 Q. Who is a member of it?

1 T. Carpenter

2 Q. Okay, and if you would just turn to
3 Exhibit 25 now --

4 Actually, let's just look at page 8 of the
5 document, which is Bates No. 1581. It's talking
6 about the filters, so I just want to confirm from
7 this.

8 So where it says "Completed Searches," so the
9 lawyer or the individual working for the employer --
10 they can view each search that's been ordered when
11 that search is completed, prior to IntelliCorp
12 completing all of the different searches that have
13 been paid for; is that right?

14 A. They can pull the report up and look
15 at -- you know.

16 It will basically list out the products and
17 byproducts. It will tell you whether that product
18 is still in process, or whether that one's complete.

19 Q. Right, but the results --

20 For example, if you order a Criminal
21 SuperSearch with a national one, and you are going
22 to also get a single county search, you can -- you,
23 the employer, can view the Criminal SuperSearch
24 results in advance of the results for the single
25 county criminal search; is that correct?

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2 A. Yes.

3 MS. BECKER: Okay. Please mark this
4 as the next exhibit.

5 (Thereupon, the document was then
6 marked by the shorthand reporter as
7 Exhibit 26 for identification.)

8 BY MS. BECKER:

9 Q. We've asked the reporter to mark as
10 Exhibit 26 IntelliCorp documents 892 through 902.

11 These are a set of frequently asked questions.
12 Are these Q&As that are for what IntelliCorp might
13 respond to certain questions posed by an employer
14 customer?

15 A. Yes. I think they represent the -- you
16 know, common questions we would get from a user at
17 one of the client locations.

18 Q. Do you know if these have been updated
19 since -- I don't know. There's a date at the bottom
20 that says June 8th, 2010.

21 A. I would like to tell you I hope they have
22 been updated since then. There's a good chance that
23 they have been, but I don't know that for sure.

24 Q. If you look at page 895 of this document,
25 or rather IntelliCorp Bates stamp 895, toward the

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, CHERYLL KERR, LSR, a Notary Public within
and for the State of New York, do hereby certify:
That Todd Carpenter, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me, and that such deposition is a true
record of the testimony given by such witness.

I further certify that I am not related to
any of the parties to this action by blood or
marriage; and that I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 17th day of December, 2012.


CHERYLL KERR, LSR